

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAME RODRIGUEZ-RAMIREZ,

Defendant.

8:22CR44

PLAINTIFF'S SENTENCING
MEMORANDUM

Plaintiff, United States of America, by and through the undersigned Assistant United States Attorney for the District of Nebraska, offers its sentencing memorandum in advance of the hearing scheduled for January 5, 2023 at 11:00 a.m. Plaintiff requests that the Court accept the Plea Agreement (Filing No. 44).

A. Procedural History.

On February 24, 2022, Jame Rodriguez-Ramirez (Rodriguez) was indicted by the Grand Jury in the District of Nebraska on two counts of possession of visual depictions of minors engaging in sexually explicit conduct, in violation of Title 18, United States Code, Section 2252(a)(4)(B), and on one count of receipt or distribution of visual depictions of minors engaging in sexually explicit conduct, in violation of Title 18, United States Code, Section 2252(a)(1) & (b)(1).

No pretrial motions were filed in the case and on June 7, 2022, the Court issued a Trial Order setting trial for July 19, 2022. (Filing No. 32). The trial date was thereafter continued to September 20, 2022. (Filing No. 34). The Defendant pled guilty to Count 2 of the Indictment on September 30, 2022 (Text Minute Entry 38). The Court adopted the Magistrate Judge's Findings and Recommendations on Plea of Guilty, found the defendant guilty, and accepted the plea on November 2, 2022. (Filing No. 46).

The Presentence Investigation Report (PSR) calculated that defendant had zero criminal history points placing him in criminal history category I. (PSR ¶¶ 83-91). Defendant had a total offense level of 40 and a 3-level reduction for acceptance of responsibility establishing an adjusted total offense level of 37. (PSR ¶¶ 67-79). Accordingly, defendant's sentencing guideline range is 210-240 months' imprisonment. (PSR ¶ 155).

B. Factual Background.

The factual background of this case is accurately set forth in ¶¶ 15-27 and 30-60 of the PSR.

C. Contested and Uncontested Sentencing Issues.

1. Defendant's Motion for a Departure and/or Variance.

Defendant has not identified specific grounds for a departure therefore the Court may interpret his motion as a motion for variance. The parties have effectively factored a variance into the plea agreement (Filing No. 44) by capping imprisonment at 120 months. Therefore, Plaintiff does not oppose a downward variance in principle but disagrees that the 60-month sentence requested by the defendant is sufficient and appropriate. Though defendant argues he is unlikely to recidivate, his offense conduct demonstrates the opposite. Defendant was investigated several times by different agencies for conduct that took place before and after he turned 18 years old. Defendant was therefore placed on notice that his conduct was criminal and did not alter his behavior. (PSR ¶ 34). Accordingly, Plaintiff will seek a 120-month sentence to imprisonment.

2. Plaintiff's Responses to Defendant's Objections to the Presentence Report

Defendant filed objections to the PSR on December 12, 2022. (Filing No. 48). Plaintiff responds to each as set forth below:

- Paragraphs 69 and 79. Defendant agreed to the factual basis for the offense set forth in the plea agreement which states he “noted he and his cousins used Omegle to obtain links to the child pornography, stating he shared links with others to obtain additional links.” As noted in the Addendum to the PSR, the defendant is therefore not simply soliciting for material under the facts of this case.
- Paragraphs 70 and 79. Plaintiff agrees there was no evidence of masochistic or sadistic material, however the material included sexual abuse or exploitation of an infant or toddler. The Addendum to the PSR correctly points out that the enhancement applies in either scenario.
- Paragraphs 71 and 79. Plaintiff agrees with the Probation Officer’s Response in the Addendum to the PSR that this is a policy argument rather than a substantive objection to the calculation.

D. Conclusion.

Plaintiff respectfully requests that the Court accept the plea agreement and sentence the defendant to imprisonment for 120 months.

UNITED STATES OF AMERICA,
Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all registered participants. I also hereby certify that a copy of the same was served by regular mail, postage prepaid, to the following non-CM/ECF participants:

Jessica Curd
US Probation

s/ Christopher L. Ferretti
Assistant U.S. Attorney